

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 96-14152
Chapter 11

STAR HOSIERY, INC.

Debtor

STAR HOSIERY, INC.

Plaintiff

v

Adversary Proceeding
No. 96-1250

BAKER HERITAGE, INC.,
and DAVID M. BAKER

Defendant

MEMORANDUM

Appearances: Kyle R. Weems, Weems & House, Chattanooga, Tennessee,
Attorney for Plaintiff

Thomas E. Ray and Shannon Seckler, Ray & Associates, P.C.,
Chattanooga, Tennessee, Attorneys for Defendants

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

Plaintiff, Star Hosiery, is the debtor in a chapter 11 bankruptcy case. Star Hosiery's complaint alleges that the defendants, Baker Heritage, Inc., and David M. Baker, are indebted to it and asks for judgment for the amounts they owe plus costs, attorney's fees, and late charges. The defendants have filed a combined motion to dismiss or abstain.

The statutes vest bankruptcy jurisdiction in the United States district courts, and they are allowed to refer bankruptcy cases and proceedings to the bankruptcy judges for the district. 28 U.S.C. § 1334(a),(b); 28 U.S.C. § 157(a). The district court has referred bankruptcy cases and proceedings to the bankruptcy judges.

Bankruptcy jurisdiction includes more than jurisdiction of bankruptcy cases. 28 U.S.C. § 1334(a). It includes three kinds of civil proceedings: (1) civil proceedings arising under the Bankruptcy Code (title 11 U.S.C.), (2) civil proceedings arising in the bankruptcy case, and (3) civil proceedings related to the bankruptcy case. 28 U.S.C. § 1334(a), (b).

The court of appeals for this circuit has given a broad range to the third category – civil proceedings related to a bankruptcy case. *Lindsey v. O'Brien, Tanski, Tanzer & Young Health Care Providers (In re Dow Corning Corp.)*, 86 F.3d 482 (6th Cir. 1996); *8300 Newburgh Road Partnership v. Time Constr. Co. (In re Time Constr. Co.)*, 43 F.3d 1041 (6th Cir. 1995); *Robinson v. Michigan Consol. Gas Co.*, 918 F.2d 579 (6th Cir. 1990); *Kelly v. Nodine (In re Salem Mortgage Co.)*, 783 F.2d 626 (6th Cir. 1986).

This proceeding *at least* comes within that category, and therefore, it is within the court's jurisdiction. *Shea & Gould v. Red Apple Companies, Inc. (In re Shea & Gould)*, 198 B.R. 861 (Bankr. S. D. N. Y. 1996); *MEC Steel Buildings, Inc. v. San Lorenzo Construction Corp. (In re MEC Steel Buildings, Inc.)*, 136 B.R. 606 (Bankr. D. P. R. 1992); *THB Corp. v. Essex Builders Co. (In re THB Corp.)*, 94 B.R. 797 (Bankr. D. Mass. 1988). The court will deny the defendants' motion to dismiss for lack of subject matter jurisdiction.

The next question is whether the court should abstain from hearing this proceeding so that it can be tried in a state court. The defendants originally seemed to argue that mandatory abstention is based on lack of subject matter jurisdiction, which is not correct. The statute assumes the court has jurisdiction of the matter as a related civil proceeding. 28 U.S.C. § 1334(c)(2) & (b); *see also Robinson v. Michigan Consol. Gas Co.*, 918 F.2d 579, 584 (6th Cir. 1990) (mandatory abstention not jurisdictional); *Williams v. Shell Oil Co.*, 169 B.R. 684, 690-692 (S. D. Cal. 1994).

The defendants subsequently argued mandatory abstention as a separate remedy. The defendants have not offered any facts necessary to support mandatory abstention. Apparently, there is no pending state court proceeding. *Sapir v. Hudson Realty Co. (In re Rosalind Gardens Associates)*, 158 B.R. 15, 18 (S. D. N. Y. 1993); *Flores v. Telemundo Group*, 133 B.R. 674, 676 (D. P. R. 1991); *Container Transport, Inc. v. Scott Paper Co. (In re Container Transport, Inc.)* 86 B.R. 804, 806 (E. D. Pa. 1988); *Nationwide Roofing & Sheet Metal, Inc. v. Cincinnati Ins. Co. (In re Nationwide Roofing & Sheet Metal,*

Inc.), 130 B.R. 768, 778-779 (Bankr. S. D. Ohio 1991). Likewise, the defendants have not suggested that a state court could more timely adjudicate this controversy. These are but two of the standards that should be met for mandatory abstention. *World Solar Corp. v. Steinbaum (In re World Solar Corp.)*, 81 B.R. 603, 606 (Bankr. S.D. Cal. 1988).

The statute also provides for discretionary abstention:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

28 U.S.C. § 1334(c)(1).

Discretionary abstention is not favored. The courts should abstain only in exceptional cases. *West Coast Video Enterprises, Inc. v. Owens (In re West Coast Video Enterprises, Inc.)*, 145 B.R. 484, 488 (E. D. Pa. 1992); *Refrigerant Reclamation Corp. v. Todack (In re Refrigerant Reclamation Corp.)*, 186 B.R. 78, 83-84 (Bankr. M. D. Tenn. 1995).

The fact that state law will control the outcome is not a sufficient ground for discretionary abstention. The court is regularly called upon to decide disputes that are governed entirely or almost entirely by state law, even in core proceedings. *MEC Steel Buildings, Inc. v. San Lorenzo Construction Corp. (In re MEC Steel Buildings, Inc.)*, 136

B.R. 606, 611(Bankr. D. P. R. 1992); *Staats v. Adolfson & Peterson, Inc. (In re Statewide Pools, Inc.)*, 126 B.R. 877, 882 (Bankr. S. D. Ohio 1991); *Refrigerant Reclamation Corp. v. Todack (In re Refrigerant Reclamation Corp.)*, 186 B.R. 78, 84 (Bankr. M. D. Tenn. 1995).

Assuming the defendants are entitled to a jury trial, that also is not a sufficient reason to justify discretionary abstention. The court can handle this proceeding up to the point that a jury trial must be held and then refer it to the district court. Or, the defendants can file a motion to withdraw the reference. 28 U.S.C. § 157(d); *Fed. R. Bankr. P.* 5011. If the district court grants the motion, the court will follow the procedure established by the district court, which may be the same. *West Coast Video Enterprises, Inc. v. Owens (In re West Coast Video Enterprises, Inc.)*, 145 B.R. 484, 488 (E. D. Pa. 1992); *Shea & Gould v. Red Apple Companies, Inc. (In re Shea & Gould)*, 198 B.R. 861 (Bankr. S. D. N. Y. 1996); *THB Corp. v. Essex Builders Co. (In re THB Corp.)*, 94 B.R. 797 (Bankr. D. Mass. 1988).

This process should not require any more time or be any more complex than a similar proceeding in state court. Of course, a state court proceeding might be more convenient for the defendants, but that does not mean it will be more efficient for both parties. It could be much less convenient or efficient for the plaintiff. The court is not convinced that abstention will result in a more efficient process than continuing this proceeding in this court. *Staats v. Adolfson & Peterson, Inc. (In re Statewide Pools, Inc.)*, 126 B.R. 877, 883 (Bankr. S. D. Ohio 1991); *West Coast Video Enterprises, Inc. v. Owens*

(In re West Coast Video Enterprises, Inc.), 145 B.R. 484, 488-489 (E. D. Pa. 1992). The court will also deny the defendants' motion to abstain.

This Memorandum constitutes findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052.

At Chattanooga, Tennessee.

BY THE COURT

entered 5/1/1997

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

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Defendant

ORDER

In accordance with the Memorandum entered by the court,

It is ORDERED that the defendants' Motion to Dismiss Adversary Proceeding
for Lack of Jurisdiction is DENIED.

ENTER:

BY THE COURT

entered 5/1/1997

R. THOMAS STINNETT
U.S. BANKRUPTCY JUDGE